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CURRENT INTELLIGENCE WEEKLY SUMMARY

21 January 1960

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WEST BERLIN'S LEGAL TIES WITH BONN

Although West Berlin has developed firm economic and political ties with West Germany over the past decade, the city's legal relationship with the Federal Republic remains complex and unique. West Berlin's legal status is in some ways similar to that of the West German states but remains limited by certain powers reserved to the three Western Allies, whose forces officially occupy the city.

Since 1949 West Berlin has gradually become extensively integrated with West Germany in matters of economy, law, administration, and politics. Although Khrushchev justified his November 1958 ultimatum on Berlin by claiming that Allied violations had voided the 1944-45 agreements for governing Germany and Berlin, the Soviet leader later admitted the legitimacy of the Allied presence in the city but argued that the passage of time had rendered the occupation status of Berlin "abnormal" and therefore in need of change. In recent months, the USSR has stepped up its efforts to refute any West German claim to legal ties or responsibility in West Berlin.

West Berlin's relationship with the Federal Republic now is governed by the Western Allies' 1955 Declaration on Berlin. This document provides for a large measure of self-government by the Berliners and extensive economic and political integration with West Germany, but reserves certain key

MAJOR DOCUMENTS ESTABLISHING BERLIN'S LEGAL STATUS

1. *Protocol on the Zones of Occupation in Germany and the Administration of Greater Berlin*, concluded by representatives of the United States, Britain, and the Soviet Union in September 1944, established the status of Greater Berlin as a separate and special occupied area under three-power control (France was added as a fourth power in July 1945) and provided for a governing authority (Kommandatura) to direct the city's administration. (The unilateral division of the city by the Soviet authorities in 1948 suspended the four-power administration, leaving West Berlin under tripartite Western administration but did not change four-power responsibility for Berlin.)

2. *Article 23 of the Basic Law (Constitution) of the Federal Republic of Germany (1949)* included "Greater Berlin" as a state (land) of West Germany.

3. *Military Governors' Letter of 12 May 1949* stipulated that Berlin should not be governed by the Federal Republic and could be represented in the federal parliament only on a non-voting basis.

4. *Three-Power Statement of the Principles Governing the Relationship Between the Kommandatura and Greater Berlin (14 May 1949)* declared Berlin should not be included as a state in the initial organization of the Federal Republic.

5. *Berlin Constitution (1950)* included Berlin as a state of the Federal Republic, contrary to the 1949 Statement of Principles, and stated that the West German constitution and laws are binding on Berlin. (The Western military commandants suspended these provisions of the Berlin Constitution and established the requirement that any federal law to have effect in West Berlin must first be adopted separately by the Berlin parliament.)

6. *Convention on Relations Between the Three Powers and the Federal Republic (1954)*. The Western Allies recognized the close relationship between West Berlin and West Germany by stating their intention to consult with the Federal Republic in regard to the exercise of Allied rights and responsibilities in Berlin.

7. *Declaration on Berlin (5 May 1955)* superseded the 1949 Statement of Principles and is the basic document governing Allied-German relations in Berlin. It provided for a large measure of self-government for West Berlin and for extensive economic and political integration with West Germany while reserving certain key areas of responsibility to Allied control. Berlin's status in international law as an occupied area was not changed.

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Approved for Release
Date MAY 2000

areas of responsibility to Allied control. The declaration did not change Berlin's status in international law as an occupied area. Neither the unilateral division of Greater Berlin by the Communists in 1948 nor the establishment of West German sovereignty in 1955 altered this status.

To avoid any action that might be interpreted by the USSR as nullifying the four-power responsibility for Berlin agreed on in 1944, Allied statements and declarations have consistently maintained that Greater Berlin has not become a state of the Federal Republic. The West Germans, on the other hand, have always considered Berlin legally one of their states--limited only by the special Allied responsibilities in Berlin. However, the common German-Allied interest in avoiding any situation lending itself to Soviet exploitation has, thus far, prevented this divergence of views from having much practical significance.

During the past decade, the Allies have actively encouraged the development of extensive political and economic relations between West Berlin and the Federal Republic. The most significant move in this regard was the approval in 1951 by the Allied authorities of a system in which Berlin may use "cover laws" to enact federal laws and regulations, merely by stating that the provisions of the federal law are also valid in Berlin rather than having the Berlin parliament re-enact the entire law.

Allied Responsibilities

Although all Berlin legislation, including that originating in the West German parliament, is still formally reviewed by the Western Allied commandants, a system of prior informal consultations has virtually eliminated the necessity for the Allies to amend or nullify such laws. Under this system, any federal bill containing a Berlin clause which might impinge on Allied rights or fields of special interest is discussed by Allied, Berlin, and West German authorities when it is introduced into the Bundestag. This system has also promoted a close and cordial relationship between the Allies and the Germans and has minimized the chances for serious challenges to Allied authority in the city.

The degree of supervision exercised by the Allies has gradually been relaxed to the point where Berlin, with Allied consent, now may even amend occupation legislation. The 1955 Declaration on Berlin provided that the Allies would normally exercise powers only in such matters as (1) security, (2) disarmament and demilitarization, (3) relations with authorities abroad, (4) payment of occupation costs, and (5) authority over police to the extent necessary to ensure security.

As a result of continuing Allied responsibility for Berlin's security, West German defense legislation does not apply to Berlin, Berliners cannot be drafted into the West German armed forces, and West German Army units are not stationed in Berlin. Generally, however, Berlin is not precluded from participating in the fields reserved to the Allies as long as its actions do not conflict with existing Allied law. For example, despite the limitation of the 1955 declaration, the Federal Republic is allowed to represent Berlin abroad, and West Berlin is included in West German treaties which are made applicable by the same procedure used to effect federal German law in the city.

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Berlin Role in Bonn Government

Despite legal restrictions insisted on by the Allies, Berlin takes an active and influential part in the federal government. The votes of Berlin's representatives in both houses of the West German parliament are not allowed to determine the passage or rejection of bills. Berlin delegates, however, participate in debates, introduce bills, and have full voting rights in committees. Berliners, moreover, hold high positions in the federal government and legislature: West Berlin Mayor Willy Brandt has served as president of the Bundesrat; Heinrich Krone of Berlin is majority leader of the Bundestag; and another Berliner, Ernst Lemmer, holds the important position of minister for all-German affairs in the federal cabinet.

To stress Berlin's ties with the Federal Republic as well as to foster the idea that the city is Germany's national capital, the Bundestag and Bundesrat have regularly held annual meetings in Berlin, and two of the three meetings of the federal convention which elects the West German president have been held in Berlin. These meetings have come under increasing East German attack as part of a general Soviet and East German propaganda campaign against West Berlin's close ties with West Germany.

The federal government has also undertaken a special building program in Berlin for government offices, including reconstruction of the Reichstag building, burned in 1933. A Berlin residence for the federal president was recently completed.

Federal Agencies in Berlin

The development of close administrative, judicial, and fiscal relationships between Berlin and West Germany necessarily has led to widespread federal activity in the city. The federal government is represented by a special commissioner for Berlin, Heinrich Vockel, who has under him a representative of each of the federal ministries except that of defense. Allied statements have made it clear, however, that federal agencies wield no executive powers over Berlin agencies, and in case of conflict with Allied policy, the authority of the Allied Kommandatura prevails.

West Berlin's deficit economy requires extensive federal aid, and except for token American contributions, the federal government makes good the city's annual budget deficit of over $200,000,000. West Germany also assists Berlin through tax preferences and preferential shipping rates and by promoting the placement of industrial orders in Berlin. This obvious "life or death" dependence on West German economic, financial, and moral support explains the overriding opposition of Berlin's leaders to any effort to interfere with the city's ties with the Federal Republic.

In view of their direct concern for the city's economic viability, West Berlin leaders are exceptionally outspoken in their insistence that these ties be carefully maintained and fostered. Adenauer, who, as a negotiator for Germany, must consider intra-Allied tactics, in public statements has tended to avoid mention of Berlin's political and economic ties with Bonn, stressing instead the need for preserving the existing legal basis for Allied presence in Berlin.

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